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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,370	02/11/2005	Gregory Thomas Flitton	040857/282241	1070
826	7590	01/07/2008		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER NGUYEN, TUAN HOANG	
			ART UNIT 2618	PAPER NUMBER
			MAIL DATE 01/07/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/506,370		FLITTON, GREGORY THOMAS	
	<b>Examiner</b>		<b>Art Unit</b>	
	Tuan H. Nguyen		2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/26/2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 18 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claim 18 is not properly described in the application as filed, and the specification was not contain a written description a method of testing a mobile telephone terminal comprising the steps of: transmitting from a test apparatus to the terminal on a downlink a predetermined data pattern which the terminal will recognize

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and which will prompt the terminal to transmit an access request on an uplink, the terminal receiving said predetermined data pattern and responding by transmitting to the test apparatus an access request, and the test apparatus receiving said access request and analyzing it to assess the performance of the terminal based upon assessment of the access request and without prompting the terminal to do anything other than transmit said access request.

Claim 19 is not properly described in the application as filed, and the specification was not contain a written description the test apparatus for testing a mobile telephone terminal comprising: a memory for storing a predetermined data pattern, a generator for generating a signal corresponding to said predetermined data pattern on a downlink, said signal being adapted to be recognizable by the terminal and to trigger it to transmit an access request on an uplink, and a detector for detecting and analyzing said access request to assess the performance of the terminal, the apparatus having no capability of continuing communication with the terminal in response to said access request other than through said signal on the downlink.

Therefore, the amendment to add new claims raise an issue of new matter.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 11-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mount et al. (US PAT. 6,272,337 hereinafter, "Mount") in view of Jandrell (US PAT. 5,365,516).

Consider claim 1, Mount teaches testing a mobile telephone terminal comprising the steps of: transmitting from the test apparatus to the terminal on a downlink a predetermined data pattern which the terminal will recognize and which will prompt the terminal to transmit an access request on an uplink (see fig. 1A col. 2 line 52 through col. 3 line 28); and the terminal receiving said predetermined data pattern and responding by transmitting an access request to the test apparatus on the uplink (col. 4 lines 15-28).

Mount does not explicitly show that the test apparatus receiving the access request and analyzing the access request to assess the performance of the terminal based upon assessment of the access request alone.

In the same field of endeavor, Jandrell teaches the test apparatus receiving the access request and analyzing the access request to assess the performance of the terminal based upon assessment of the access request alone (col. 29 lines 55-64).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, the test apparatus receiving the access request and analyzing the access request to assess the performance of the terminal based upon assessment of the access request alone, as taught by Jandrell, in order to provide

a combined two-way radio data communication system which transfers messages and determines the location of transponder devices relative to a coordinate system.

Consider claim 2, Mount further teaches multiple predetermined data patterns are provided for testing the terminal under different operating conditions, each data pattern prompting a different response from the terminal in transmitting an access request (col. 4 line 54 through col. 5 line 6).

Consider claim 3, Mount further teaches multiple predetermined data patterns are such that they each prompt the terminal to transmit an access request at a different power level (col. 4 line 54 through col. 5 line 6).

Consider claim 4, Mount further teaches multiple predetermined data patterns are such that they each specify a different maximum number of times the terminal should send an access request if the terminal receives a response to none of them (col. 7 lines 15-23).

Consider claim 5, Mount further teaches predetermined data pattern is transmitted multiple times at different power levels and the response of the terminal is analyzed to determine a threshold at which the terminal fails to transmit an access request (col. 4 line 54 through col. 5 line 6).

Consider claim 6, Mount further teaches predetermined data pattern is transmitted to the terminal on a cable connection (col. 3 lines 41-47).

Consider claim 7, Mount further teaches predetermined data pattern is transmitted to the terminal over an air interface (col. 6 lines 9-17).

Consider claim 8, Mount further teaches the air interface is screened from other signals (col. 6 lines 9-17).

Consider claim 11, Mount teaches testing a mobile telephone terminal, the test being structured and arranged to transmit a predetermined data pattern on a downlink to prompt a response from the terminal in the form of an access request on an uplink (see fig. 1A col. 2 line 52 through col. 3 line 28).

Mount does not explicitly show that the test apparatus being structured and arranged to analyze the access request and produce a test result based upon assessment of the access request alone.

In the same field of endeavor, Jandrell teaches the test apparatus being structured and arranged to analyze the access request and produce a test result based upon assessment of the access request alone (col. 29 lines 55-64).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, the test apparatus being structured and arranged to analyze the access request and produce a test result based upon assessment of the

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access request alone, as taught by Jandrell, in order to provide a combined two-way radio data communication system which transfers messages and determines the location of transponder devices relative to a coordinate system.

Consider claim 12, Mount further teaches generates multiple predetermined data patterns for testing the terminal under different operating conditions of transmission power level and/or maximum number of access requests to be transmitted if there is no response to any of them (col. 4 line 54 through col. 5 line 6 and col. 7 lines 15-23).

Consider claim 13, Mount further teaches adapted to vary the power level at which the test transmits predetermined data pattern and to analyze the response to each from the terminal (col. 4 line 54 through col. 5 line 6).

Consider claim 14, Mount further teaches connected to the terminal to transmit predetermined data pattern either by a cable connection or an air interface (col. 3 lines 41-47).

Consider claim 17, Mount teaches test apparatus for testing a mobile telephone terminal, the test apparatus comprising a memory to store a predetermined data pattern and a transmitter to transmit predetermined data pattern on a downlink to mobile telephone terminal in order to prompt a response from mobile telephone terminal in the



form of an access request on an uplink to the test apparatus (see fig. 1A col. 2 line 52 through col. 3 line 28 and col. 4 lines 15-28).

Mount does not explicitly show that a receiver to receive said access request on the uplink from the terminal, and a processor to analyze said access request and produce an assessment of the performance of the terminal based upon assessment of the access request alone.

In the same field of endeavor, Jandrell teaches a receiver to receive said access request on the uplink from the terminal, and a processor to analyze said access request and produce an assessment of the performance of the terminal based upon assessment of the access request alone (col. 29 lines 55-64).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, a receiver to receive said access request on the uplink from the terminal, and a processor to analyze said access request and produce an assessment of the performance of the terminal based upon assessment of the access request alone, as taught by Jandrell, in order to provide a combined two-way radio data communication system which transfers messages and determines the location of transponder devices relative to a coordinate system.

6. Claims 9-10 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mount in view of Jandrell, and further in view of Nelson, Jr. et al. (U.S. PUB. 2003/0028643 hereinafter, "Nelson").

Consider claims 9 and 15, Mount and Jandrell, in combination, fails to disclose the access request is analyzed by a power measurement.

However, Nelson teaches the access request is analyzed by a power measurement (page 1 [0008]).

Therefore, it is obvious to one of ordinary skill in the art at the time the invention was made to incorporate the disclosing of Nelson into view of Mount and Jandrell, in order to provide enhancing the utilization of resources in a wireless communication system.

Consider claims 10 and 16, Nelson further teaches the access request is analyzed by a modulation quality measurement (page 2 [0015] and [0016]).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any response to this action should be mailed to:

Mail Stop \_\_\_\_\_ (Explanation, e.g., Amendment or After-final, etc.)

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Facsimile responses should be faxed to:

(571) 273-8300

Hand-delivered responses should be brought to:

Customer Service Window

Randolph Building

401 Dulany Street

Alexandria, VA 22313

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan H. Nguyen whose telephone number is (571) 272-8329. The examiner can normally be reached on 8:00Am - 5:00Pm.

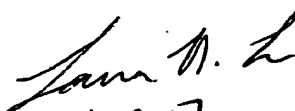
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Maung Nay A. can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

Tuan Nguyen  
Examiner  
Art Unit 2618

T.J

  
1-03-07

LANA LE  
PRIMARY EXAMINER